

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DENEISE INGRAM, as legal guardian for
KAREN CHANDLER,

Plaintiff,

v.

COVENANT CARE MIDWEST, INC. d/b/a
NEBRASKA SKILLED NURSING AND
REHABILITATION, and COVENANT CARE,
INC.

Defendants.

No. 8:09-CV-00110-JFB-TDT

ANSWER

(Jury Trial Requested)

COME NOW Defendants, Covenant Care Midwest, Inc. d/b/a Nebraska Skilled Nursing and Rehabilitation and Covenant Care, LLC, incorrectly named herein as Covenant Care, Inc., (collectively "Covenant Care") by and through its undersigned counsel, and for its Answer and Affirmative Defenses to Plaintiff's Complaint, states as follows:

PARTIES, JURISDICTION AND VENUE

1. Covenant Care states that it is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint, and, therefore, denies those averments, allegations, and statements.

2. Covenant Care admits Paragraph 2 of the Complaint.

3. Covenant Care admits Paragraph 3 of the Complaint.

4. Covenant Care admits Paragraph 4 of the Complaint.

5. Answering Paragraph 5 of the Complaint, Covenant Care admits that jurisdiction and venue in this Court are proper.

6. Covenant Care states that it is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint, and, therefore, denies those averments, allegations, and statements.

COMMON VENTURE/ENTERPRISE

7. Covenant Care denies the allegations set forth in Paragraph 7 of the Complaint.

8. Covenant Care denies the allegations set forth in Paragraph 8 of the Complaint.

9. Covenant Care denies the allegations set forth in Paragraph 9 of the Complaint.

10. Covenant Care denies the allegations set forth in Paragraph 10 of the Complaint.

11. Covenant Care denies the allegations set forth in Paragraph 11 of the Complaint.

FACTUAL ALLEGATIONS AGAINST THE DEFENDANTS

12. Covenant Care admits Paragraph 12 of the Complaint.

13. Covenant Care denies the allegations set forth in Paragraph 13 of the Complaint.

14. Covenant Care denies the allegations set forth in Paragraph 14, including subsections a) – e), of the Complaint.

15. Covenant Care denies the allegations set forth in Paragraph 15 of the Complaint.

16. Covenant Care denies the allegations set forth in Paragraph 16 of the Complaint.

17. Covenant Care denies the allegations set forth in Paragraph 17 of the Complaint.

18. Covenant Care denies the allegations set forth in Paragraph 18 of the Complaint.

19. Covenant Care denies the allegations set forth in Paragraph 19 of the Complaint.

20. Covenant Care denies the allegations set forth in Paragraph 20 of the Complaint.

21. Covenant Care denies the allegations set forth in Paragraph 21 of the Complaint.

22. Covenant Care denies the allegations set forth in Paragraph 22 of the Complaint.

23. Covenant Care denies the allegations set forth in Paragraph 23 of the Complaint.

CLAIMS AGAINST THE DEFENDANTS

COUNT ONE – NEGLIGENCE

24. Answering Paragraph 24 of the Complaint, Covenant Care incorporates its responses to Paragraphs 1-23 of the Complaint.

25. Covenant Care denies the allegations set forth in Paragraph 25 of the Complaint.

26. Covenant Care denies the allegations set forth in Paragraph 26 of the Complaint.

27. Covenant Care denies the allegations set forth in Paragraph 27 of the Complaint.

28. Covenant Care denies the allegations set forth in Paragraph 28 of the Complaint.

29. Covenant Care denies the allegations set forth in Paragraph 29 of the Complaint.

30. Covenant Care denies the allegations set forth in Paragraph 30 of the Complaint.

31. Covenant Care denies the allegations set forth in Paragraph 31, including subsections a) – j), of the Complaint.

32. Covenant Care denies the allegations set forth in Paragraph 32 of the Complaint.

33. Covenant Care denies the allegations set forth in Paragraph 33 of the Complaint.

34. Covenant Care denies the allegations set forth in Paragraph 34 of the Complaint.

35. Covenant Care denies the allegations set forth in Paragraph 35 of the Complaint.

COUNT TWO – BREACH OF CONTRACT

36. Answering Paragraph 36 of the Complaint, Covenant Care incorporates its responses to Paragraphs 1-35 of the Complaint.

37. Covenant Care states that it is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint, and, therefore, denies those averments, allegations, and statements.

38. Covenant Care denies the allegations set forth in Paragraph 38 of the Complaint.

39. Covenant Care denies the allegations set forth in Paragraph 39 of the Complaint.

COUNT THREE – BREACH OF FIDUCIARY DUTY

40. Answering Paragraph 40 of the Complaint, Covenant Care incorporates its responses to Paragraphs 1-39 of the Complaint.

41. Covenant Care denies the allegations set forth in Paragraph 41 of the Complaint.

42. Covenant Care states that it is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 42 of the Complaint, and, therefore, denies those averments, allegations, and statements.

43. Covenant Care denies the allegations set forth in Paragraph 43 of the Complaint.

44. Covenant Care denies the allegations set forth in Paragraph 44 of the Complaint.

45. Covenant Care denies the allegations set forth in Paragraph 45 of the Complaint.

46. Covenant Care denies the allegations set forth in Paragraph 46 of the Complaint.

47. Covenant Care denies the allegations set forth in Paragraph 47, including subsections a) – f), of the Complaint.

48. Covenant Care denies the allegations set forth in Paragraph 48 of the Complaint.

49. Covenant Care denies the allegations set forth in Paragraph 49 of the Complaint.

50. Covenant Care denies the allegations set forth in Paragraph 50 of the Complaint.

51. Covenant Care denies the allegations set forth in Paragraph 51 of the Complaint.

52. Covenant Care denies the allegations set forth in Paragraph 52 of the Complaint.

53. Covenant Care denies the allegations set forth in Paragraph 53 of the Complaint.

54. Covenant Care denies the allegations set forth in Paragraph 54, including subsections a) – j), of the Complaint.

55. Covenant Care denies the allegations set forth in Paragraph 55 of the Complaint.

56. Covenant Care denies the allegations set forth in Paragraph 56 of the Complaint.

PRAYER FOR RELIEF

Covenant Care admits that Plaintiff has requested a trial by jury but denies all other averments, allegations, and statements contained in Plaintiff's Prayer for Relief.

GENERAL DENIAL

57. Covenant Care denies each and every allegation contained herein unless specifically admitted herein.

AFFIRMATIVE DEFENSES

58. Covenant Care specifically reserves the right to amend this Answer to add or delete affirmative defenses as additional investigation, discovery or circumstances warrant.

FIRST AFFIRMATIVE DEFENSE

59. Plaintiff has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

60. Plaintiff's claims are barred, in whole or in part, by the doctrines of laches, waiver, settlement, release, or estoppel.

THIRD AFFIRMATIVE DEFENSE

61. Plaintiff's claims are barred, in whole or in part, because the Plaintiff failed to mitigate damages.

FOURTH AFFIRMATIVE DEFENSE

62. The damages alleged in the Plaintiff's Complaint were caused by the intervening or superseding actions, errors, or omissions of individuals or entities other than Covenant Care, and to which Covenant Care has no legal relationship and over the actions of which Covenant Care has no control.

FIFTH AFFIRMATIVE DEFENSE

63. Plaintiff's damages, if any, are not of the nature or to the extent alleged.

SIXTH AFFIRMATIVE DEFENSE

64. Plaintiff's damages, if any, are not recoverable by law.

REQUEST FOR JURY TRIAL

65. Covenant Care requests a jury trial in this matter.

WHEREFORE, Defendant requests that the Court dismiss the Complaint with prejudice, award Covenant Care its costs and any other and further relief as the Court finds just or proper or allowed by the pleadings.

Dated this 30th day of March, 2009.

COVENANT CARE MIDWEST, INC.
D/B/A NEBRASKA SKILLED NURSING
AND REHABILITATION and COVENANT
CARE, INC., Defendants.

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2009 I electronically transmitted the foregoing to the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

Matthew G. Miller
Matthew G. Miller, PC, LLO
matt@mgmillerlaw.com

By: s/ Robert M. Slovek
Robert M. Slovek